HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

Writ Petition No.13038 of 2003

Between

K.Bharathi ..Petitioner

AND

Union of India represented by its Secretary, Ministry of Home Affairs, and another ..Respondents

:: JUDGMENT ::

Counsel for the Petitioner: Sri K.Subba Rao

Counsel for respondent No.1: Sri A.Rajasekhar Reddy, Assistant Solicitor General.

Counsel for respondent No.2: Government Pleader for Revenue

28-11-2006

Per G.S.Singhvi, CJ

In this petition, the petitioner who is the widow of recognized freedom fighter - Smt.Lakshmi Narasimha Reddy has prayed for issue of a mandamus to the respondents to pay her pension under Swatantra Sainik Samman Pension Scheme, 1980 (for short, 1980 scheme) from the date of application.

Late Sri Lakshmi Narasimha Reddy participated in anti Nizam Government movement. This is evinced from letter dated 26.12.1991 vide which Assistant Secretary to Government of Andhra Pradesh, Revenue (FF) Department forwarded the case of late Sri Lakshmi Narasimha Reddy and five others and letters dated 2.9.1992 and 16.12.1995 sent by Secretary to Government of Andhra Pradesh, Revenue Department to Deputy Secretary to Government of India, Ministry of Home Affairs, New Delhi recommending the grant of pension to the petitioner's husband and five others. However, their claim was rejected vide letter dated 3.7.1996.

The petitioner challenged the aforementioned decision in Writ Petition No.4152 of 2002 which was allowed by the learned Single Judge on 7.7.2002 with a direction to the Union of India to reconsider the matter in the light of the recommendations made by the Government of Andhra Pradesh in Letter No.80165/FF/II/A2/94-1, dated 8.1.1999.

In compliance with the directions given by the Court, the

concerned authority of the Government of India reconsidered the claim of the writ petitioner for grant of pension as widow of freedom fighter and accepted the same. Consequently, a letter dated 11.11.2002 was issued by Under Secretary to the Government of India communicating acceptance of petitioner's claim for grant of pension at the rate of Rs.3,000/-. However, the benefit of pension was confined from the date of sanction i.e. 23.10.2002. This is the reason why the petitioner has filed the present writ petition.

Learned counsel for the petitioner relied on the judgment of Supreme Court in **Mukundlal Bhandari vs. Union of India**[1] and argued that the petitioner is entitled to the benefit of pension under the 1980 scheme from the date of application and therefore, a direction be issued to respondent No.2 to pay her the arrears of pension.

Sri A.Rajasekhar Reddy, Assistant Solicitor General made strenuous efforts to persuade the Court to negative the claim of the petitioner by arguing that in terms of policy decision taken by the Government of India, those found eligible for grant of pension under 1980 Scheme by being treated as freedom fighters who had taken part in Hyderabad liberation movement, are entitled to pension only from the date of sanction and not from the date of application. Sri Reddy also made a suggestive argument that petitioner was sanctioned pension notwithstanding the fact that her husband's status as freedom fighter was doubtful.

I have considered the respective submissions and perused the

record including the file produced by Sri Rajasekhar Reddy. In regard to the last submission of the learned Assistant Solicitor General, it is sufficient to observe that neither in the communication dated 11.11.2002 nor in the file produced by him, there is any iota of evidence to show that the Government of India had ever doubted the credibility of the claim of the petitioner's husband to be treated as freedom fighter who had taken part in Hyderabad liberation movement. Therefore, the assertion contained in the counter affidavit filed by Sri S.D.Kaushik, Under Secretary to the Government of India who does not claim to be author of the note which led to issuance of the communication dated 11.11.2002 can not be acted upon for the purpose of denying relief to the petitioner.

I am further of the view that in the absence of any specific enumeration in the notings recorded in the file or communication sent by the officer concerned for sanction of pension in favour of the petitioner which may suggest that her husband's status as freedom fighter was doubtful, it is not open to respondent No.1 to contend that petitioner should be denied pension with effect from the date of application on the ground that her husband's status as freedom fighter is not crystallized.

In this connection, reference can be usefully made on decisions of the Supreme Court in **Commissioner of Police vs. Gordhandas Bhanji**[2] and **Mohinder Singh Gill vs. Chief Election Commissioner**[3]**.**

In my opinion, the petitioner's case is squarely covered by the ratio in **Mukundlal Bhandari** (supra) wherein the Supreme Court had unequivocally ordained that pension to the freedom fighters should be payable from the date of application and not from the date of sanction.

In the result, the writ petition is allowed. The respondents are directed to pay pension to the petitioner with effect from the date of application. Needful be done within three months from the date of receipt of certified copy of this order by the Government of India.

G.S.SINGHVI, CJ

28.11.2006
psr

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[1] AIR 1993 SC 2127

[2] AIR 1952 SC 16

[3] AIR 1978 SC 851